

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
<i>ex. rel.</i> LISA MADIGAN,	)	
Attorney General of the State of Illinois	)	
	)	
Complaint to suspend tariff changes submitted by	)	
Ameren Illinois and to investigate Ameren Illinois Rate	)	
MAPP pursuant to Sections 9-201, 9-250 and 16-108.5	)	Docket No. 13-0501
of the Public Utilities Act	)	
	)	
	)	(cons.)
	)	
AMEREN ILLINOIS COMPANY	)	
d/b/a Ameren Illinois	)	Docket No. 13-0517
Revisions to its Formula Rate Structure and Protocols	)	

**REPLY BRIEF ON EXCEPTIONS**

**REGARDING BIFURCATED ISSUES OF**

**THE PEOPLE OF THE STATE OF ILLINOIS**

**The People of the State of Illinois**

**By LISA MADIGAN, Attorney General**

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May 30, 2014

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**REPLY BRIEF ON EXCEPTIONS REGARDING BIFURCATED ISSUES OF  
THE PEOPLE OF THE STATE OF ILLINOIS**

NOW COME the People of the State of Illinois (“AG” or “the People”), by Lisa Madigan, Attorney General of the State of Illinois, and pursuant to Part 200.830 of the Illinois Commerce Commission’s (the “Commission” or the “ICC”) rules, 83 Ill. Admin. Code Part 200.830, hereby reply to the Briefs on Exceptions and Exceptions on Bifurcated Issues filed by Ameren Illinois Company (“Ameren” or “AIC” or “the Company”), ICC Staff, and the Citizens Utility Board (“CUB”) in response to the Administrative Law Judges’ Proposed Order on Bifurcated Issues (the “POBI”) in this proceeding.

**I. INTRODUCTION**

The People support the POBI, which is well-reasoned and supported by the record; accordingly, they did not file a Brief on Exceptions on Bifurcated Issues in this proceeding. The People take no position on many of the arguments raised in the parties’ Briefs on Exception on

Bifurcated Issues. The People do object, however, to Ameren's exception no. 2 regarding the POBI's decision on a potential rulemaking proceeding, as discussed below.

## **II. BIFURCATED ISSUES**

- A. Should "formula rate structure" be defined to mean the approved tariff set forth in Ameren's tariffs as Rate 21 MAP-P, Tariff Sheet Nos. 16 – 16.013?**
- B. Should the "formula rate template" be defined to mean the formula rate schedules (other than FR A-1 and FR A-1 REC), appendices, and related work papers?**
- C. Should changes to only Schedules FR A-1 and FR A-1 REC require Commission approval through a Section 9-201 filing?**
- D. Should the issues raised by Staff be deferred for consideration in the ordered formula rate rulemaking?**

As the People stated in their Initial Brief on Bifurcated Issues at 11, the bifurcated issues in this proceeding should be resolved *in this proceeding*, in time for the Company's 2014 electric delivery service formula rate update proceeding. Additionally, as the People noted in their Initial Brief on Bifurcated Issues at 11-12, a new rulemaking proceeding could take at least two and a half years. Staff Ex. 11.0 at 16:344-348. That timeline would extend to the end of 2016, which would leave only one remaining year of annual formula rate updates under the Energy Infrastructure Modernization Act.<sup>1</sup>

Ameren contends in its Brief on Exceptions on Bifurcated Issues at 18-20 that the Bifurcated Issues should be resolved in a future rulemaking proceeding because any resolution of those issues in this proceeding would be automatically applicable to Commonwealth Edison

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<sup>1</sup> "Sections 16-108.5, 16-108.6, 16-108.7, and 16-108.8 of this Act, other than this subsection, are inoperative after December 31, 2017 for every participating utility, after which time a participating utility shall no longer be eligible to annually update the performance-based formula rate tariff pursuant to subsection (d) of this Section." 220 ILCS 5/16-108.5(h).

Company (“ComEd”). Quoting Section 10-101<sup>2</sup> of the Public Utilities Act, Ameren suggests that the Bifurcated Issues must necessarily be resolved in a rulemaking. But Section 10-101 by its terms applies to a proceeding “*intended*” to lead to policies, practices, rules or programs applicable to more than one utility (emphasis added); this proceeding on bifurcated issues was not intended to implicate ComEd. Ameren’s Brief on Exceptions at 18 baldly mischaracterizes the POBI where it argues that “the [POBI] agrees” that the Bifurcated Issues in this docket are relevant to ComEd. In fact, page 6 of the POBI states:

When [Staff witness] Ebrey raised the issues at hand, these consolidated dockets had been underway for some time and no indication was given that the outcome would be applicable to both AIC and ComEd.

Ameren suggests at page 19 of its Brief on Exceptions on Bifurcated Issues that the Commission’s decision in this proceeding with respect to the Bifurcated Issues is solely a matter of an “interpretation of the Commission’s authority under EIMA,” and thus that equal protection principles require that the issues be resolved identically with regard to ComEd. However, if this is solely a legal interpretation, it is unclear why fact witnesses were required; conversely, if Ameren’s expert witnesses provided relevant testimony as to how the bifurcated issues would impact Ameren, then ComEd’s expert witnesses could do the same in a separate contested proceeding. Indeed, in a recent motion filed by Staff in Docket No. 14-0316<sup>3</sup> and cited by Ameren in its Brief on Exceptions on Bifurcated Issues at 18, Staff stated that the other docket

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<sup>2</sup> “Any proceeding intended to lead to the establishment of policies, practices, rules or programs applicable to more than one utility may, in the Commission’s discretion, be conducted pursuant to either rulemaking or contested case provisions, provided such choice is clearly indicated at the beginning of such proceeding and subsequently adhered to.” 220 ILCS 5/10-101.

<sup>3</sup> Docket No. 14-0316 was initiated by ComEd on April 16, 2014 through its Verified Petition to Make a Housekeeping Revision and a Compliance Change to Commonwealth Edison Company’s Filed Performance Based Delivery Service Rate Formula.

“would be the appropriate venue for the Commission to consider the arguments made in the Ameren Docket for applicability to ComEd.”<sup>4</sup>

### **III. CONCLUSION**

For all of the reasons stated above and in the People’s Initial Brief on Bifurcated Issues and Reply Brief on Bifurcated Issues in this proceeding, the People of the State of Illinois respectfully request that the Commission enter the Proposed Order on Bifurcated Issues dated May 9, 2014 as its final Order on Bifurcated Issues in this proceeding.

Respectfully submitted,

**The People of the State of Illinois**

**By LISA MADIGAN, Attorney General**

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<sup>4</sup> Docket No. 14-0316, Staff Mtn. for Leave to File Exceptions to ComEd’s Draft Order, for Entry of an Interim Order, and to Reopen the Record (filed May 16, 2014).